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DISTRICT COURT OF GUAM

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MARY L. M. MORAN CLERK OF COURT

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In re
ASSIGNMENT OF DUTIES TO
MAGISTRATE JUDGE.

GENERAL ORDER NO. 04-00016

IT IS HEREBY ORDERED that, unless restricted by General Order of this Court, the United States Magistrate Judge of this Court is authorized to perform all of the duties and functions prescribed and authorized by 28 U.S.C. §636, or any other statutes or Federal Rules of Procedure which authorize a Magistrate Judge to perform judicial duties or functions.

IT IS FURTHER ORDERED that the following matters are referred to the Magistrate Judge of this Court for appropriate disposition:

Criminal Matters:

- Process complaints and issue arrest warrants or summonses, and dismiss complaints upon the request of the United States Attorney;
- Issue and accept returns of search and seizure warrants, including warrants based upon oral or telephonic testimony;
- Review applications for and issue orders relating to the installation of a pen register, trap and trace, transponder or other surveillance device;
- Conduct initial appearance proceedings for defendants and appoint counsel when necessary;
- Approve attorney's expense vouchers;
- · Set bail for material witnesses;

Conduct preliminary examinations;

Conduct removal hearings and issue warrants of removal; 2 Accept waivers of indictment; 3 Conduct extradition proceedings; 4 Try persons accused of misdemeanors and other petty offenses, order a presentence 5 investigation report on any such person who is convicted or pleads guilty or nolo contendere, and sentence such persons; 6 Accept a plea of guilty and impose sentence in a case involving an indictment, 7 information, or complaint charging a misdemeanor offense originating in another district, which has been transferred to this District, if the defendant consents to 8 proceed before the Magistrate Judge; 9 Conduct voir dire and select petit juries for the district judge in felony cases with the consent of the parties; 10 Conduct post-indictment arraignment proceedings, appoint counsel when necessary, 11 accept not guilty pleas and set the case for trial and/or further proceedings before the District Judge; 12 Issue subpoenas, writs of habeas corpus ad testificandum or ad prosequendem, or 13 other orders or warrants necessary to obtain the presence of parties, witnesses, or evidence needed for court proceedings; 14 Exonerate or forfeit bonds, set aside forfeitures, and reinstate bail in proceedings 15 pending before the Magistrate Judge; 16 Approve personal and corporate surety bonds and bonds requiring personal sureties; 17 Conduct Nebbia hearings; 18 Administer the Central Violations Bureau and recommend amendments to the bail schedule: 19 Fix or modify bail and conduct detention hearings and issue release and detention 20 orders; provided, however, that the magistrate judge shall not modify or approve a modification of any bail previously fixed by order of a district judge other than upon 21 the grand jury return, except upon specific authorization from the district judge; 22 Order examinations to determine mental competency and conduct all further proceedings thereunder related to the issue of competency; 23 Rule upon motions to require defendants in criminal cases to participate in a line-up, 24 furnish handwriting samples or furnish voice exemplars; 25 Rule upon pretrial matters related to discovery; 26 Conduct proceedings for the transfer of offenders; 27 Conduct initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency; 28

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- Appoint interpreters in cases initiated by the United States;
- Conduct preliminary hearings leading to the revocation of probation;
- Receive grand jury returns, order that any indictments returned be filed, issue appropriate warrants and summonses, and set conditions for release on an indictment or information; and
- Review and issue orders relating to applications for the sealing of indictments and
 affidavits for search warrants and complaints and warrants, and other applications
 for sealing documents related to cases prior to the assignment of the case to a
 District Judge.

Civil Actions and Miscellaneous Proceedings:

- Conduct proceedings relating to naturalization matters;
- Conduct proceedings relating to the admission of attorneys to practice before this Court;
- Review and approve requests for exemption and/or excuse from jury service, grand jury empanelments, and conduct juror qualification hearings;
- Conduct proceedings relating to social security disability matters;
- Conduct proceedings relating to habeas corpus petitions. In so doing, the Magistrate Judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to the District Judge proposed findings of fact and recommendations for disposition of the petition by the District Judge. Any order disposing of the petition may only be made by the District Judge;
- Conduct proceedings relating to pro se § 1983 and Bivens cases for pretrial proceedings and shall submit to the District Judge proposed findings of fact and recommendations for the disposition of petitions filed by prisoners challenging the conditions of their confinement;
- · Conduct calendar and status calls;
- Conduct any and all proceedings in a civil case (including jury and non-jury trials, and the entry of final judgment) upon the consent of the parties in accordance with this General Order;
- Hear and determine any pretrial motions, including discovery motions, other than case-dispositive motions;
- Conduct scheduling conferences, pretrial conferences, settlement conferences, and related pretrial proceedings in civil cases;
- Conduct voir dire and select petit juries for the District Judge in civil cases with the consent of the parties;
- Accept petit jury verdicts in civil cases in the absence of the District Judge;
- Rule upon objections to the allowance of costs by the Clerk of Court;

•	Hear and determine matters relating to the enforcement of administrative subpoenas
•	Hear and determine Internal Revenue Service Attachments or Orders to enforce obedience to Internal Revenue Service summonses to produce records or give testimony;
•	Hear and determine Guam Department of Revenue and Taxation Attachments or Orders to enforce obedience to Department of Revenue and Taxation summonses to produce records or give testimony;
. •	Hear and determine matters relating to applications for the appointment of a guardian ad litem;
•	Hear and determine applications for letters rogatory; and
•	Issue subpoenas, writs of habeas corpus ad testificandum or ad prosequendem, or other orders or warrants necessary to obtain the presence of parties, witnesses, or evidence needed for court proceedings.
I	Γ IS FURTHER ORDERED that the following procedures shall be applicable in
riminal cases before this Court:	
•	All informations, indictments, complaints, citations, or other instruments on file with the Clerk of Court which charge only misdemeanors or other petty offenses (including such cases transferred to this District) shall upon filing with the Clerk of Court be assigned to the Magistrate Judge.
•	If a defendant is charged with a Class A misdemeanor, the Magistrate Judge shall inform him of his right to trial, judgment, and sentencing by a District Judge and that he may have a right to trial by jury before a District Judge or Magistrate Judge. The Magistrate Judge shall not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the Magistrate Judge and expressly and specifically waives trial, judgment, and sentencing by a District Judge Any such consent and waiver shall be made in writing or orally on the record. If a defendant elects to be tried or to plead before a District Judge, the Magistrate Judge shall note that fact and immediately return the papers related to the case to the Clerk
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of Court for assignment to the District Judge.

- In felony cases, the Magistrate Judge shall hear and determine any pretrial motion, including discovery motions, other than case-dispositive motions.
- In felony cases, the Magistrate Judge is authorized to take a defendant's guilty plea with the written consent of the defendant, the defendant's attorney, and the Assistant U.S. Attorney. The Magistrate Judge shall administer the allocution pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The Magistrate Judge shall make written findings as to each of the subjects set forth in Fed. R. Crim. P. 11, the voluntariness of the guilty plea, and the sufficiency of the factual basis establishing each of the essential elements of the offense. The Magistrate Judge shall also make a written recommendation to the District Judge as to whether or not the District Judge should accept the defendant's plea of guilty. A copy of the Magistrate Judge's written findings and recommendation shall be served on all parties. Objections to the Magistrate Judge's findings and recommendation shall be filed within ten (10) days after having been served with a copy thereof. The District Judge will conduct a de novo review of the Magistrate Judge's findings and recommendations if, but only if, one or both parties file objections to the findings and recommendations. The District Judge shall schedule the sentencing hearing if he accepts the defendant's guilty plea.
- For any non-dispositive pretrial matter assigned to the Magistrate Judge, the Magistrate Judge shall decide such matters by written order filed at least fourteen (14) days prior to the date upon which the case is then set for trial. Any motion still pending within fourteen (14) days of trial in which no decision or order has been filed will be deemed to be pending before the District Judge, and any order or decision must be made by the District Judge and not by the Magistrate Judge.
- All dispositive motions, such as a motion to dismiss or quash an indictment or information, or to suppress evidence, shall be heard by the District Judge, unless specifically referred to the Magistrate Judge. In any dispositive motion referred to the Magistrate Judge, the Magistrate Judge shall file written proposed findings and recommendations at least fourteen (14) days prior to the date upon which the case is then set for trial. If such proposed written findings and recommendations have not been filed prior to that date, the matter will immediately be set by the Clerk of Court for a de novo hearing before the District Judge and no proposed findings and recommendations may be filed by the Magistrate Judge.
- Any party may appeal from any pretrial non-dispositive matter assigned to a Magistrate Judge or file an objection to any portion of the Magistrate Judge's proposed findings and recommendations on dispositive pretrial matters. Such appeal or objection shall be filed within ten (10) days after the filing of the Magistrate Judge's written order or after being served with a copy of the proposed findings and recommendations. A memorandum of points and authorities or supporting memorandum must accompany the filing of the appeal or objection, unless the District Judge, in his discretion, permits a later filing of such memorandum. Any party in interest may file a response to the appeal or objection within ten (10) days after having been served with a copy thereof. Each of the above ten (10) day periods may be altered by the District Judge. Oral argument will not be scheduled unless ordered by the District Judge.

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IT IS FURTHER ORDERED that the following procedures shall be applicable in civil actions before this Court:

- The District Judge may refer the following motions to the Magistrate Judge:
 - (1) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
 - (2) Motions for judgment on the pleadings;
 - (3) Motions for summary judgment;
 - (4) Motions to dismiss or permit the maintenance of a class action;
 - (5) Motions to dismiss for failure to state a claim upon which relief may be granted; and
 - (6) Motions to involuntarily dismiss an action.

Upon referral by the District Judge, the Magistrate Judge shall submit proposed findings of fact and recommendations for disposition by the District Judge of the above pretrial motions. The Magistrate Judge may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subparagraph.

- All civil cases shall automatically be assigned to the Magistrate Judge. The Magistrate Judge shall take no case-dispositive action in the case unless and until the parties consent in writing to proceed before the Magistrate Judge.
- The Clerk of Court shall notify the parties in all civil cases that they may consent to have a Magistrate Judge conduct any or all proceedings in the case and order the entry of final judgment. The notice shall be personally served upon or mailed to the plaintiff or his counsel at the time an action is filed. The plaintiff or his counsel shall provide such notice to other parties as attachments to copies of the complaint and summonses when served. Additional notices may be furnished to the parties at later stages of the proceedings.
- The Clerk of Court shall not accept a consent form unless it has been signed by all parties or their respective counsel in a case. The plaintiff, or the defendant if the plaintiff is proceeding pro se, shall be responsible for securing the execution of a consent form by the parties and for filing such form with the Clerk of Court. However, either party may procure the form. No consent form will be made available, nor will its contents be made known to any District Judge or Magistrate Judge, unless all parties have consented to the reference to the Magistrate Judge. The District Judge or Magistrate Judge may advise the parties of the availability of the Magistrate Judge to try a civil case or hear a civil motion by consent, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences.
- If the parties do not consent to proceed before the Magistrate Judge at least 10 days prior to the first noticed Scheduling Conference, the case shall be immediately transferred from the Magistrate Judge to a District Judge for final determination and disposition.
- A party added after reference of the case to the Magistrate Judge on consent will be given an opportunity to consent to the continued exercise of case-dispositive authority by the Magistrate Judge. The Clerk of Court will give the party an unexecuted copy of the notice previously provided to the plaintiff. If the party chooses to consent, it must, within 20 days of its appearance, file with the Clerk of Court the notice denoting its consent, signed by the party or its counsel. Unless the

Judge, making his or her own determination on the basis of that record. The District Judge may exercise discretion to receive further evidence, recall witnesses or recommit the matter to the Magistrate Judge with instructions.

• Other Orders. Appeals from any other decisions and orders of the Magistrate Judge not provided for in this General Order should be taken as provided by governing statute, rule, or decisional law.

IT IS FURTHER ORDERED that this General Order shall take effect immediately.

SO ORDERED this 30th day of April, 2004.

HN S. UNPINGCO Chief Judge